IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10621 of 2000

WITH

SPECIAL CIVIL APPLICATION NO. 11049 OF 2000

WITH

SPECIAL CIVIL APPLICATION NO. 11635 OF 2000

WITH

CIVIL APPLICATIONS NOS. 11667/2000 & 7559 OF 2001
IN
SPECIAL CIVIL APPLICATION NO.10621 OF 2000

WITH

CIVIL APPLICATIONS NOS.2408/2002, 2422/2002,
2645/2002, 2662/2002, 2664/2002, 2663/2002,
2666/2002, 3568/2002 & 4345/2002
IN
SPECIAL CIVIL APPLICATION NO.11049 OF 2000

WITH

CIVIL APPLICATIONS NOS. 589/2002 & 2424/2002
IN
SPECIAL CIVIL APPLICATION NO.11635 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO

of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILSH R SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PRADIP D. BHATE for Petitioners in Special Civil Application No. 10621 od 2000

MR I.M. KAPUR for Petitioners in Special Civil Application No.11049 of 2000

MR C.H. VORA for Petitioenrs in Special Civil Application No. 11635 of 2000

MR MIHIR JOSHI, Appointed as Amicus Cuarie

MR S.N. SHELAT, ADVOCATE GENERAL FOR AHMEDABAD MUNICIPAL CORPORATION WITH MR. R.M.CHHAYA in all matters

MR KAMAL TRIVEDI, ADDITIONAL ADVOCATE GENERAL FOR AHMEDABAD URBAN DEVELOPMENT AUTHORITY WITH MR D.N. PATEL in all matters

MR A.D. OZA, GOVERNMENT PLEADER FOR STATE OF GUJARAT in all matters

MR J.A. ADESHRA for Memnagar Nagarpalika

MR JITENDRA MALKAN for Council for Social Justice

MS. E.SHAILAJA for Forum for Social Justice

MR A.S. VAKIL for Ahmedabad New Cotton Mills Ltd. and New Subhlakshmi Association, Paldi Patidar (Lehandar) Trust, New Neelkanth Non-Trading Association and Rameshchandra Ramniklal Talati

NANAVATI ASSOCIATES for Apang Manav Mandal

MR P.R. NANAVATI for Super Star Amusement Pvt. Ltd.

MR. P.M.THAKKAR for MR R.Z. OZA for Gujarat
(Institute of Housing and Estate Developers)

MS. MEGHA JANI for Kamdar Ladat Samittee

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 02/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. This group of petitions raises common questions and the petitions have been argued together by the learned counsel appearing for both the sides.

2. The petitions center around the question of protecting, preserving and improving the water-bodies in the State and safeguarding them against encroachments.

3. In Special Civil Application No. 10621 of 2000, the petitioner has sought a direction on the respondents to place water policy of the Government of Gujarat before this Court and also the record to show big and small lakes in and around Ahmedabad as they existed in the year 1960 and their present status. A direction is also sought for removing all encroachments on the land bearing survey No. 353 of Lake Chandola and for executing the work for disiltation, reviving feeder streams and taking effective steps for reviving and recharging it. It is stated in the petition that Lake Chandola which is on the outskirts of Ahmedabad admeasured about 297 acres and 28 gunthas at the relevant time, and it was a natural reservoir harvesting rain water which flowed into it on account of natural gradient from the surrounding areas. It is stated that Chandola Lake is a stark example of the fact that the Government had no water policy. The Government holds such property in trust for the public at large, and therefore, is under a binding obligation to ensure that it was duly preserved.

3.1 In Special Civil Application No. 11635 of 2000, the petitioner No.1 is a committee said to have been

constituted with an object of redressing and ventilating grievances of the residents of Navrangpura area of the city. The petitioners have sought a direction on the respondents to take appropriate action for removing unauthorised encroachments from the final plot No.190 of the Town Planning Scheme No.3, which is popularly known as "Lakhudi Talavadi". It appears that the persons residing in some co-operative housing societies near that "Talavadi" (i.e. a small pond), had made applications to the authorities including the Municipal Commissioner for removing encroachments from the final plot No.190 on the ground that unhygenic conditions were prevailing because of unwieldy encroachments on the plot.

3.2 The Special Civil Application No. 11049 of 2000 has been preferred by a member of the managing committee of a co-operative housing society seeking a direction that unauthorised structures may be removed from and around Memnagar "Talav". It is stated in the petition that, instead of developing the ponds at Memnagar and Vastrapur, illegal constructions were allowed to come up and no action was being taken by the authorities to remove them.

4. When the matters came up before the Division Bench on 18-4-2001, a detailed interim order was made, in paragraph 95 of which, a direction was given to the State Government to maintain all water bodies, lakes, ponds etc. and to remove encroachments at the earliest, and further to give priority to water crises. The Government was directed to submit a report after six weeks as to what action it and the Corporation were proposing to take. In this interim order, reference was made to various lakes and ponds which required the attention of the authorities. Interim directions were given to remove the encroachments and recharge the lakes. By order dated 5th April 2002, noting that sufficient time had elapsed but no report was submitted by the Government and that water bodies which were natural were getting virtually destroyed on account of negligence of the authorities or on account of remaining a silent spectator, a Committee came to be constituted "for suggesting ways, means and methods to recharge the lakes / ponds in the City of Ahmedabad, both within the Municipal and AUDA limits, including collection of rain water and water conservation." The Committee was to examine cases whether in the lakes / ponds, buildings had been erected or not. By order dated 10th May 2002, the AUDA and the Municipal Commissioner of the City Corporation were directed to submit all necessary details to the Committee so that it can report. A direction was issued to the Committee to

submit its report as early as possible.

5. The respondents - authorities have filed their affidavits in Special Civil Application No. 10621 of 2000, which are relied upon by both the sides for the purposes of all the matters. There are also affidavits filed by Ahmedabad Urban Development Authority in Special Civil Application NO. 11049 of 2000, which are also referred to during the course of hearing by both the sides.

5.1 In the affidavit in reply filed by the Executive Engineer, Ahmedabad Irrigation Division, dated 16th October, 2000, it was stated that the water policy of the Government will be placed on record and that, the draft was under preparation. The list of big and small lakes in and around Ahmedabad was placed on record at Annexure R/1 of the affidavit-in-reply. It was then pointed out that originally the Chandola tank was utilized only for the purpose of irrigation. That tank was handed over to the Public Works Department by order dated 3rd April 1916 made by the Government of Bombay in the Revenue Department for handing over tanks to the P.W.D. It was stated that, during monsoon, flood water was diverted into Kharicut Canal in Section I through Raipur pick up weir and at the end of Section I, two different canals were bifurcating. One was section II for irrigation purpose and the second was Chandola Tank Feeder. The catering capacity of Chandola Tank was 425 cusec (cubic feet per second). The Chandola Tank admeasured 121 hectors and its command area was 525 hectors. It is then stated that Chandola tank is presently within the limits of the Corporation and in the surrounding areas of Chandola tank which were getting the benefit of irrigation system cultivation of the lands was stopped due to urbanization and now there are factories in the surrounding areas and water from Chandola has now no utility for irrigation. It was admitted that there were encroachments in that area. It was stated that, "Tank Chandola was meant for irrigation purpose and not for recreation of wealthy and luxurious citizens".

5.2 An affidavit-in-reply was also filed by the Additional Resident Deputy Collector on 16th October 2000 on the same lines as the above affidavit of the Executive Engineer. It was stated that, on 8th March 1976, with the help of police personnel, the encroachments were removed and the Slum Clearance Board was informed on 19th December 1980 for rehabilitation of the encroachers, but the encroachers were not ready to shift to the proposed site. The Additional Resident Deputy Collector filed a

further affidavit on 22nd January 2001 showing the steps taken by the office in compliance of the directions contained in the order dated 21-11-2000. The details were placed giving data of 45 villages in the Annexure "1" to the said affidavit, about the names of the lakes / ponds and their particulars. A list of final plots earmarked for use as playgrounds, public buildings etc. was also annexed at Annexure "2". A list of lands which had been allotted for various purposes from the erstwhile ponds with regard to the said forty-five villages was placed at Annexure "3". The details were given with regard to position of land which was used as lakes / ponds in twelve villages as per Annexures 4, 5 and 6 to that affidavit-in-reply.

5.3 The affidavit in reply dated 12th march 2001 was filed by Officer on Special Duty, Narmada water Resources and Water Supply Department on behalf of the Irrigation Department, stating that the Draft State Water Policy was prepared in August 2000 and would be finalized soon and till then, that draft was adopted by the State. It is stated that, out of 130 lakes to which reference was made, 127 were either within the jurisdiction of Nagar Panchayats or Gram Panchayats. After the finalization of the Town Planning Scheme in and around Ahmedabad, some lands of lakes / ponds vested either in the Ahmedabad Urban Development Authority or the Ahmedabad Municipal Corporation. It is stated that it was the sole responsibility of Panchayats to lookafter the lakes falling within their jurisdiction. It was stated that, in Lake Chandola, water was getting stored but it did not last long. It was also stated that there were 4350 hutments of encroachers in that area.

5.4 The Collector, Ahmedabad (the respondent No.2) filed his affidavit dated 26th June 2001 in context of the directions given in the order dated 18-4-2001 mentioning the actions undertaken by him from time to time pursuant to that order. It was stated in paragraph 4 of that affidavit-in-reply that, as per the directions of the Court, all allotments / alienations of land identifed as Lakes have been stopped since 18-4-2001 and no further allotment has been made since then. It was also stated that all efforts have been made to recharge existing water bodies by undertaking rejuvenation of the dormant and semi-live water bodies in the Nagarpalikas of Memnagar, Vejalpur, Sarkhej-Okaf, Dhandhuka and Bawla, by sanctioning projects wherever possible under the existing developmental programmes, such as "Suvarna Jayanti Swarojgar Yojana". An amount of Rs.3.13 crores was sanctioned under the said Scheme for rejuvenation of 17

Lakes situated in the areas of the Ahmedabad District. It was stated that the work had already commenced, and in Annexure "I", a chart was attached indicating the details of the 17 lakes and the amounts sanctioned towards them. It was further stated that the authority of the Collector extended over all unalienated lands vesting in Government. As regards the Chandola Lake, it was stated that the Irrigation Department of the State Government was assigned the ownership of that lake and its appurtenant lands and that the Collectorate was taking a consistent stand ever since 1978 that should the Irrigation Department wish to handover the lands of Chandola Lake back to the Revenue Department, it should take steps to do so free of encroachments.

5.5 In the affidavit dated 4th April 2002 filed by the Under Secretary in the Urban Development & Urban Housing Department of the state, in context of the order made by the Court on 22nd March 2002, it was stated that the Department was conscious of maintaining water bodies i.e. rivers, ponds, canals and lakes etc. as water bodies, and that prior to the order made on 18-4-2001, a circular was issued by the Chief Town Planner, Government of Gujarat on 15th March 1999 to all the Town Planning Officers and concerned offices for safeguarding the water bodies. Instructions were issued to maintain the water bodies as they were, while preparing and finalizing the draft Town Planning Schemes. A copy of that circular is annexed at Annexure "I" to that affidavit. Further circular was also issued on 10-8-2001 as per Annexure "II" of that affidavit, alongwith a copy of the order dated 18-4-2001 made by the Court. It was stated that, due care was taken by the Government in Town Planning Department for maintaining the water bodies as water bodies, for which, before preparing the Development Plans and draft Town Planning Schemes and sanctioning them, water bodies are shown in light blue colour. Copies of part of Development Plans and Town Planning Schemes of some cities were annexed at Annexure "III" to the affidavit. It is also stated that General Development Control Regulations were made for the safeguard of water bodies specifically for maintaining distance from water portion. Copies of the extracts of the provisions of the said Regulations were placed at Annexure "IV" of that affidavit. It was also pointed out that, for cleaning up the River Sabarmati, a Project known as "Sabarmati River Cleaning Project" was undertaken under the National River Conservation Project of the Government of Gujarat, and till December 2001, an amount of Rs.3,841 lakhs was spent towards the total cost of that project, which was Rs.11,239=13 lakhs. It was proclaimed in that affidavit

that the Government was not only conscious to safeguard the water bodies like rivers but was also keen on preserving and conserving them.

5.6 In the affidavit in reply dated 26th July 2002 filed on behalf of the State of Gujarat, it was stated that the Ministry of Water Resources, Government of India had framed the National Water Policy, which was published in April 2002, as per Annexure "A" to that affidavit. The State of Gujarat reviewed its draft Water Policy, and on 17th July 2002, has framed and published a revised draft Gujarat State Water Policy, as per copy at Annexure "B" to that affidavit. As regards Chandola Lake, it was stated that it was located within the limits of the the Ahmedabad Municipal Corporation and the State Irrigation Department was maintaining it. For water resources to impound Chandola Lake, Kharicut Canal was the feeder, and, natural water from the catchment areas was the other source. It was stated that, it was not possible to impound Chandola to its full capacity due to encroachments on the periphery of the Lake. There were more than 6000 hutments in that area. To prevent further encroachment, a trench measuring 10 ft. deep and 10 ft. wide is excavated outside the periphery of the Lake, and that this had resulted in effective curbing of progression of encroachment. It was also stated that attempts were being made to see that encroachments were removed. A copy of the map of Chandola Lake was annexed at Annexure "C" to that affidavit.

5.7 An affidavit-in-reply dated 30th July 2002 has been filed by the Principal Secretary, Urban Land Development Department of the Government of Gujarat, stating that when the Area Development Authority submits Draft Development Plan, there is a provision for inviting suggestions under section 13 of the Gujarat Town Planning Act. The development plan distinguishes the water bodies which are to be used as water bodies. The Town Planning Scheme is framed under section 40 and even in respect thereof, objections and suggestions are invited before finalizing the scheme. All the lands are required to be used as per the finalized scheme. It was stated that there are development plans of Bhavnagar, Rajkot, Ahmedabad, Surat, Vadodara, Jamnagar and Kutch and some are in the process of making. The Government would collect the data therefrom about the water bodies indicated in those plans and the schemes made thereunder. The Government would also collect the data relating to various ponds in other areas where the Scheme or the Development Plan is not operative and identify them. It was stated that the Irrigation Department of the

Government was responsible for maintaining existing minor Irrigation schemes and various dams and reservoirs. It was then stated in paragraph 3 that, in deference to the suggestion made by this Court, the State Government will notify in the Gazette the water bodies and will ensure that no lands forming part of the water bodies be alienated or transferred by the various Area Development Authorities or the Local Authorities and will oversee that the water bodies are maintained and preserved as water bodies. The State Government will also undertake relief works as provided in the Gujarat Relief Manual, and as far as possible, priority shall be given for digging up of water bodies. The Local Bodies and Area Development Authorities will be requested and instructed to see that desiltation may be undertaken in a phased and gradual manner and encroachment is removed also in a phased manner. Care will be taken that water bodies are not converted to any other use in the town planning schemes / development plans that may be made hereafter and the Local Authorities and the Area development Authorities will be instructed to ensure that no debris of buildings is dumped by any person or institution in the existing water bodies. The General Development Control Regulations which are now framed take care as regards the distance to be maintained between the development zone and the water bodies, which was minimum of nine meters, as stated in that affidavit. The Regulations also provide for percolating well to be provided if the area of building exceeds 1500 sq. mtrs. and upto 4000 sq. mtrs. The State Government in that affidavit assured this Court that proper monitoring would be undertaken to oversee the preservation and maintenance of water bodies.

5.8 In the affidavit dated 26th July 2002 filed by the Municipal Commissioner, it has been stated that the Corporation has planned to develop the lakes and ponds in the city. Kankaria Lake is a developed water body having perennial water storage. It has been stated that the Corporation has on priority basis, undertaken the development of Asarava pond, Odhav pond and Naroda pond. It has been further stated that the Atelier, Talati, Architects and Planners are entrusted with the designing and study for rejuvinating of Asarva and Odhav ponds. It is stated that "80% of the work of Asarva and Odhav ponds is completed". The priority for further development is to be given to the ten lakes / ponds mentioned in statement marked at Annexure "I' to this affidavit. The details of fund allocation / expenditure for the purpose in the annual budget of the Corporation for the year 1998-2000 have been given in paragraph 2 of the

affidavit. It is then stated that the Corporation has taken up a major programme of rain water harvesting under which 66 defunct borewells are being converted into re-charging wells for rain water. Other 34 units comprising of the percolating wells and percolating pits have been constructed in various gardens of the Corporation and for this work, cost of almost Rs.1 crore has been incurred. It is declared that the Corporation has resolved to help the citizens for constructing percolating wells in their private land as a part of rain water harvesting programme. It is stated that the Corporation is pursuing with the Government of India for allocation of grants for development of lakes. A statement identifying the plots of water bodies which can be developed gradually is annexed with the said affidavit.

5.9 In the affidavit in reply dated 30th July 2002 of the Superintendent Engineer, Irrigating Project Circle, Ahmedabad, it is brought on record that, under the Water Resources Department, there are total 182 major and medium irrigation projects which are completed and 14,208 minor irrigation schemes are executed, as per the statement at Annexure "A" to the affidavit, which gives details of existing percolation tanks. It is stated that all the water bodies as stated in the statement at Annexure "A" are being maintained as water bodies.

5.10 In the further affidavit that has been filed by the Chief Town Planner today, it has been stated that the requirement laid down under Regulation No.14 of the Development Control Regulations is only the minimum prescribed, but whenever planning for a pond is undertaken, the distance to be kept is determined depending upon the location of the water body. It is pointed out that, on the periphery of Kankaria Lake, there is 90 mtrs. to 160 mtrs. of green / recreation zone created. On the south-west side, a distance of 120 mtrs. is retained in respect of Chandola lake. For "Sarasiyu Talav" on its southern side, there is village site and on its northern side, open space is kept upto 100 mtrs. It is stated that, while framing the Scheme, proper distance is always provided for keeping the construction away from the water body, having regard to the requirement of the particular water body, and that the above instances are only illustrative. It is further stated that, when planning for a pond is undertaken, embankment itself is phased with varying width according to the requirement of the pond and this coupled with requirement of the minimum distance of 9 mtrs. from the pond, may lead to a distance of more than 9 mtrs. in

which no construction can be made. The State Government had also examined the planning undertaken by the various local authorities and the provision of 9 mtrs. is only for the minimum setbacks for different sizes of plots. It is stated that, such minimum distance to be maintained from water bodies is incorporated in the Regulation after consideration by the Area development Authorities and the State Government in consultation with the Local authorities, and that the said Regulation is reasonable having regard to the development of urban area and considering the maintenance of water bodies. We may here make it clear that the validity of the said Regulation No.14 is not in issue in these petitions.

5.11 In the affidavit dated 1st August 2002 of the Chief Executive Officer of the AUDA, it is stated that, as per Regulation No.14 of the G.D.C. Regulations which are a part of the Development Plan sanctioned by the notification dated 18th May 2002 issued under section 17(1)(C) of the Gujarat Town Planning & Urban development Act, 1976, the distance of 9 mtrs. is required to be earmarked for not carrying out any work of development within that area. It is stated that the AUDA, however, examines each case on individual basis, according to the requirement of the individual water body for the purpose of fixing of peripheral distance from the water bodies.

5.12 In the affidavit-in-reply dated 27th March 2001 filed by the Chief Officer of the Memnagar Nagarpalika in Special Civil Application No. 11049 of 2000, it is stated that the respondent No.1 addressed a letter to the AUDA requesting steps to be taken for removing the encroachments around the pond. A resolution was also passed by the Nagarpalika on 30-12-2000 for obtaining permission for revitalization of "Madaria Talav" from the Collector, Ahmedabad and to get the necessary grant. The Gujarat Municipal Finance Board had also intimated by its letter dated 16-1-2001 that an amount of Rs.63,25,518=00 was sanctioned by the Board for the Project. A copy of that letter is at Annexure "VI" to the said affidavit.

5.13 In the affidavit of the Chief Executive Officer, AUDA, dated 19th April 2001 in Special Civil Application No.11049 of 2000, it was stated that the AUDA had never attempted to fill up the lake and in fact, it had shown its desire to develop lakes situated at Vastrapur, Memnagar, Chandlodia and other places. The State Government was required to handover the possession of the lakes. A copy of the Vastrapur Lake Development Project is annexed to the affidavit.

5.14 In the additional affidavit dated 3-4-2002 filed on behalf of the respondent No.2 - AUDA in Special Civil Application No. 11049 of 2000, it was stated that the lake and its surrounding was the property of the State Government, and that it was not possible to make any arrangement for relocation of the unauthorised occupants and beautification of periphery of the lake. Particulars are given about recharging the sub-soil water by saying that 134 surface level percolating borewells were constructed on the lands of the AUDA. It was stated that, by June 2002, AUDA was to construct at least 10 surface level percolating borewells in four ponds, one at Memnagar and three at Vastral. It was also stated that the AUDA undertook to make proposals in the Town Planning Schemes in such a way that all the existing water bodies are retained as such and will be maintained as water bodies with the development of gardens on their peripheries, on the grant of actual possession. As regards the possession of lands of and around the water bodies, it was made clear to us by the learned Advocate General that there would be no difficulty in the AUDA proceeding on the footing that it was having possession of those lands for the purpose of preservation and improvement of the water bodies.

5.15 In the additional affidavit dated 29th July 2002 filed on behalf of the AUDA by the Chief Executive Officer, it was stated that, in the revised development plan which came to be sanctioned by the notification dated 18th May 2002, Regulation No.14 of the GDC Regulations and provided for distances from water course. It was also stated that the AUDA had already formulated schematic plans to recharge the "Memnagar Talav" as well as various other water bodies. So far as, lakes at Vastrapur and Vejalpur are concerned, many actions have already been implemented in that regard. Particulars of Digging, laying of underground storm water pipeline etc. are given in that affidavit.

6. It has been contended on behalf of the petitioners by the learned counsel appearing for the petitioners as well as the learned counsel who assisted the Court as Amicus Curiae that the neglect on the part of the respondents authorities has brought a situation to the present pass where most of the water bodies have dried up and encroachment is rampant in many of them. Referring to the provisions of Articles 39(b), 48A, 51A(g) of the Constitution, as also the provisions showing the functions of the local authorities under Articles 243-G and 243-W, read with Schedules 11 and 12 to the Constitution, the counsel argued that, despite

there being clear Constitutional mandate to preserve and improve lakes and ponds, the State and the Urban Development Area Authorities, as also the Local Bodies have miserably failed in the discharge of their duties, though fully armed with powers, coupled with duty, under various provisions of the laws laying down their functions. The learned counsel referred to the provisions of the Bombay Provincial Municipal Corporation Act 1949, the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993 to point out that the local bodies were amply armed with powers to remove encroachments and to preserve lakes and ponds and do appropriate water management of the water supply sources falling within their areas. The provisions of Environment (Protection) Act, 1986 and the Water (Prevention and Control of Population) Act, 1974 were referred, to point out that both quantity and quality of water were required to be preserved by the concerned authorities, in the interest of public having an access to the water from lakes and ponds. It was submitted that these authorities were trustees of such natural resources and were duty bound to preserve them and it was no answer to say that lakes have dried up. It was submitted that all the lakes and ponds should be notified so that their identity does not get lost in future and necessary desilting should also be done to rejuvenate them. For that purpose, storm water drainage system and water harvesting programme should be implemented. There should not be allowed any construction near the periphery of the water bodies so as to hamper their use or to prevent the natural course of water which fill such lakes and ponds during the rainy season. It was submitted that the water policy should be announced and implemented to ensure that the posterity is assured of water supply suited to good health of the community.

6.1 The learned counsel relied upon the decision of the Supreme Court in Hinchlal Tiwari v. Kamaladevi and others, reported in (2001) 6 Supreme Court Cases 496, in which, the Court held that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the right guaranteed under Article 21 of the Constitution. It was held that the Government, having noticed that a pond is falling in disuse, should bestow its attention on developing the same which would, on one hand, prevent ecological disaster and on the other provide better environment for the benefit of the public at large.

6.2 The decision in M.C. Mehta v. Union of India and others, reported in (1996) 8 Supreme Court Cases 462, was cited to point out that the Supreme Court having regard to the opinion of the two expert bodies, held that the mining activities in the vicinity of the tourist resorts were bound to cause severe impact on the local ecology and therefore, mining activity should be stopped within three kilometers of Badkal Lake and Surajkund. This was done after noticing the noise levels which were observed.

7. The learned Advocate General submitted that there can be no dispute over the fact that the water bodies which vest in the State or the Area Development Authorities or the Local Bodies must be preserved as such water bodies. It was submitted that the State has prepared a draft of State Water Policy which is placed on record. The Central Government has also prepared a National Water Policy, a copy of which is placed on record. It was submitted that though, in the past, due attention has not been given to the preservation of the water bodies, the State is now aware of the importance that they deserve and is keen to discharge its constitutional and legal duties to safeguard the lakes and ponds. It was submitted that the State will take care to see that the water bodies are not lost and their desiltation will be taken up in a phased manner. Action will also be taken for removing encroachments. Furthermore, attention will be paid to recharging of the water bodies by providing for storm water drainage system and other means. The Area Development Authorities and the Local Bodies will be free to start the processes for preservation and improvement of water bodies without awaiting of any formal handing over of possession of the lands covered by such water bodies. As regards the peripheral distance which as per the interim orders made on 18th April 2001 was to be 500 meters and 1,000 meters in case of larger areas as mentioned in paragraph 92 of the order, the learned counsel submitted that, providing of such distance was a matter which was to be dealt with under the provisions of the Town Planning Act under which the process involved taking into consideration the objections and formulation of regulations to provide for distances which are required to be maintained from the pond and actual constructions. He relied upon Regulation 14 to point out that, after the interim order was made, now the field is governed by this statutory regulation which provides for a distance varying from 9 to 30 meters from the water course. On being asked as to what was the rationale behind fixing minimum of 9 meters, the learned

Advocate General and the learned Additional Advocate General have come out with a further affidavit on behalf of the State and the AUDA showing that the provisions of 9 meters in Regulation 14 was only the minimum prescribed, and that depending upon the nature of water bodies, the authorities have been prescribing greater distance on which construction is not allowed around the water bodies.

7.1 The learned Advocate General and other Counsel for the respondents, in support of their contentions, relied upon the following decisions :-

[a] The decision of this Court in State of Gujarat v. Shankerji Chaturji, reported in 37 (3) GLR 755 was cited for the proposition that inherent powers of the High Court under section 482 of the Criminal Procedure Code cannot be exercised contrary to the statutory provisions.

[b] The decision of the Supreme Court in U.P. State Road Transport Corporation v. Mohd. Ismail, reported in 1991 (3) SCC 239 was cited for the proposition that the statutory discretion cannot be fettered by self-created rules or policy. The Court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case or to exercise it in a manner not expressly required by law. (paragraph 12 of the judgement).

[c] The decision of this Court in Gordhanbhai Kahandas Dalwadi v. The Anand Municipality, reported 16 GLR 558 was cited for the proposition that Final Town Planning Scheme would prevail over byelaws, regulations etc.

[d] The decisions of this Court in Motiben Somaji v. State of Gujarat, reported in 37(2) GLR 286 and Karimbhai Kalubhai Belim v. State of Gujarat, reported in 1996(1) GLH 200, were cited for the proposition that, once development permission is obtained under section 29 of the Town Planning Act, it is not necessary to obtain permission under section 65 and 66 of the Bombay Land Revenue Code.

[e] The decision of the Supreme Court in Prakash Amichand Shah v. State of Gujarat, reported in AIR 1986 SC 468 was cited for the proposition that, merely because a decision of the Town

Planning Officer under section 32 is not made appealable, it does not follow that the provisions should be struck down.

[f] The decision of this Court in Bhupendrakumar Ramanlal v. State of Gujarat, reported in 1995 (1) GLH 1124 was cited for the proposition that, the framing of a town planning scheme is a form of delegated legislation and under section 65(3), it becomes a scheme as if it is enacted under the Act.

[g] The decision of this Court in Chandulal H. Godasara v. State of Gujarat, reported in 1997 (1) GLH 757 was cited to point out that, it was held that since the scheme sanctioned has force of law under section 65(3) of the Gujarat Town Planning Act, even the government as owner was estopped from raising any dispute as regards the re-distribution since by virtue of section 67, all lands vested in the authority.

[h] The decision of the Supreme Court in Mansukhlal Vithaldas Chauhan v. State of Gujarat, reported in JT 1997(7) SC 695 was cited for the proposition that the authority under section 6 of the Prevention of Corruption Act has to apply its mind and exercise discretion and not to act under the instructions of the High Court. (paragraph 32 and 33 of the judgement).

[i] The decision of the Supreme Court in Sher Singh v. Union of India, reported in 1995 (8) JT 323 was cited for the proposition that the Court would not interfere with the matters of government policy.

[j] The decision of the Supreme Court in Sanchalakshri v. Vijaykumar Raghuvirprasad Mehta, reported in JT 1998(8) SC 55 was cited for the proposition that the High Court cannot normally substitute its own conclusion on penalty and impose some other penalty.

[k] The decision of the Supreme Court in Sh. Mayank Rastogi v. Sh. V.K.Bansal, reported in JT 1998 (1) SC 33, was cited for the proposition that, merely because at an earlier point of time when construction was raised the plot had been shown as open space, it cannot give right to challenge or prevent the construction.

[l] Jayamal Jayantilal Thakor v. Chief Commissioner of Income-Tax & others, reported in XXXIX (1) GLR 43 was relied upon for the proposition that the High Court would not be entitled to pass any order which it thought fit in the interest of justice, but which may be contrary to statutory provision.

[m] The case of Her Highness Maharani Shantadevi P. Gaekwad v. Savjibhai Haribhai Patel, reported in 2001 (3) 2097 was referred to for the proposition that Town Planning was a State subject and that the right of development and Town Planning was essentially the right within the purview of the State Government.

[n] The decision in Indian Acrylics v. Union of India, reported in (2000) 2 SCC 678 was cited to point out that, it was held that it is not for the Supreme Court to direct as to how the municipal authorities should carry out their functions and resolve difficulties in regard to management of solid waste.

[o] Reliance was also placed on the observation made in Goa Foundation v. Diksha Holdings Pvt. Ltd., reported in AIR 2001 SC 184, at page 187, to the effect that the society shall have to prosper, but not at the cost of the environment and in the similar vein the environment shall have to be protected but not at the cost of the development of the society. There shall have to be both development and proper environment and as such, a balance has to be found out and administrative action ought to proceed in accordance therewith and not dehors the same.

8. The learned counsel who appeared for the parties who have made applications grudging against the distances of 500 meters and 1000 meters mentioned in paragraph 92 of the interim order dated 18-4-2001 have argued that the Court has no power to make any such interim orders, and that making of such orders would amount to legislating, because, providing for such distances in a judicial order would tantamount to substituting the power to frame Regulations under the Act for prescribing distances to be kept open from the periphery of the water bodies, in which no construction could be made.

9. Water is essential to many of the mankind's most

basic activities, such as, agriculture, forestry, industry, power generation and recreation. Water being an integral part of the environment, its availability is indispensable to the efficient functioning of the biosphere. Without a safe, reliable and stable water supply, human and economic development would not be possible. Nearly every decision whether about housing, transportation, economic growth or developmental work is linked to the use of the water resources of the community. Freshwater is as essential to sustainable development as it is to life, and, water beyond its geographical, chemical, biological functions in the hydrological cycle, has the social, economic and environmental values that are interlinked and mutually supportive. Safe water, adequate sanitation and education about hygiene are basic human rights that protect health, increase the sense of well-being and improve productivity. Water related leisure activities, such as water-sports, contribute to a healthy life style. Human habitation near water resources was essential to the very existence of the human race and the ancient civilizations thrived near the vicinity of freshwater.

10. The citizens have a fundamental right under Article 15(2)(b) of the Constitution, of not being subjected to any disability, liability, restriction or condition with regard to the use of wells, tanks and bathing ghats, roads and places of public resort maintained out of State funds or dedicated to the use of the general public. The word "tank" also means a pool, pond, reservoir or cistern, especially one for drinking water or irrigation - see Webster's II New Riverside University Dictionary. The State is enjoined with a duty under Article 48A of the Constitution to protect and improve the environment and to safeguard the forests and wildlife of the country and every citizen has a duty under Article 51A(g), inter alia, to protect and improve the natural environment including forests, lakes and rivers. The State Legislature has, under Entry 17 of List II of the Seventh Schedule to the Constitution, competence to make laws with regard to water i.e. water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of the Union List. The Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary with respect to schemes for economic development and social justice, as may be entrusted to them including those in relation to the matters covered in the Eleventh Schedule right from Article 243G of the Constitution, namely, "Minor irrigation, water management and watershed

development" at entry 3, and "drinking water" at entry 11. Similarly, the Municipal Corporations and the Municipalities may be entrusted by law the matters enumerated in the Twelth Schedule, which included "water supply for domestic, industrial and commercial purpose" at entry 5, "Urban forestry, protection of environment and promotion of ecological aspects", at entry 8, besides "Urban planning including town planning", at entry 1, all read with Article 243W of the Constitution. The State Legislature has exclusive power to legislate with regard to local government, that is to say, the Constitution and power of Municipal Corporations etc. under Entry 5 of the State List.

10.1 All lakes and tanks which are not the properties of individuals are declared to be the properties of the Government by virtue of section 37 of the Bombay Land Revenue Code. Disposal of water vesting in the Government is regulated by Chapter 9A of the Gujarat Land Revenue Rules, 1972.

11. The Municipal Corporations are under an obligation to make reasonable and adequate provision for "the management and maintenance of all municipal water works and the construction or acquisition of the new works necessary for a sufficient supply of water for public and private purposes", under section 63(1)((20) of the Bombay Provincial Municipal Corporation Act, 1949 and has discretion to provide for protection of the environment and promotion of ecological aspects, urban planning including town planning and regulation of land use, under sub-sections (8) and (8B) of Section 66 of that Act. For ensuring sufficient water supply for meeting with the reasonable requirement of the residents of the City, the Commissioner may "construct, maintain in good repair, alter, improve and extend water works either within or without the City", under section 189(2)(a) of the Act; and, "all municipal water works shall be maintained by the Commissioner", as provided by section 189(3) of the Act. The expression "Water works" as defined by section 2(76) of that Act includes a lake, tank etc. The expression "municipal water works" is defined under section 2(39) to mean water works belonging to or vesting in the Corporation. Thus, it is the statutory duty of the Municipal Commissioner to maintain and manage the municipal lakes and ponds of the City.

11.1 Prohibition of certain acts affecting the municipal water works is provided for in section 194 and sub-section 1(a) provides that, except with the permission of the Corporation, no person shall erect any

building for any purpose whatever on any part of such area as shall be demarcated by the Commissioner surrounding any lake, tank or reservoir from which a supply of water is derived for a municipal water work. Carrying on of any operation of manufacture, trade or agriculture in any manner, or doing of any act whatever, whereby injury may arise to any such lake, tank, well or reservoir or to any portion thereof or whereby the water of any such lake, tank, well or reservoir may be fouled or rendered less wholesome, is prohibited by clause (d) of sub-section (1) of Section 194 of the B.P.M.C. Act.

11.2 Under section 196(1), all existing public drinking fountains, tanks, reservoirs, cisterns, pumps, wells, ducts and works for the gratuitous use of the inhabitants of the City shall vest in the Corporation and be under the control of the Commissioner; and under sub-section (2) of section 196, the Commissioner may maintain the said water works and regulate the use of any water of such work under section 197 and Chapter X of Appendix IV of the said Act of 1949. Thus, the Commissioner is enjoined with the duty to maintain lakes and ponds of the city which are to statutorily vest in the Corporation, and regulate the water supply therefrom. Except as permitted by any order made under the B.P.M.C. Act, no person shall bathe in or near any lake, tank, fountain, reservoir or on any part of a river vesting in the Corporation or wash any animal or clothes or other articles in or near any such place or work, throw or put any animal or thing therein or foul or corrupt the water in any degree, as provided by Sections 311, 312 and 314(b) of that Act. These are the statutory provisions meant to ensure the quality of water of lakes and ponds. Whoever contravenes any of the provisions of sections 194(2), 311 clauses (a), (b), (c) and (d), and 312 of the Corporations Act shall be deemed to have committed an offence under section 277 of the Indian Penal Code, as provided in section 393 of that Act. Contravention of section 194(1), which prohibits certain acts including erection of any building on any part of such area as shall be demarcated by the Commissioner surrounding any lake is an offence punishable under section 397 of the Corporations Act, 1949 with imprisonment and fine. These provisions suggest that, for safeguarding the lakes and ponds, the Commissioner is empowered to demarcate the area surrounding any such lake or pond, on which no person can construct any building except with the permission of the Commissioner. Under section 271(1)(a)(iii), the draft improvement scheme made by the Commissioner shall provide for the laying of storm water drains for efficient draining of streets. The

Corporation can make byelaws under section 458(2) for regulating all matters and things connected with the supply and use of water.

12. As regards the Municipalities, Section 80(2) of the Gujarat Municipalities Act, 1963, inter alia, provides that all property of the nature specified therein, not being specially reserved by the State Government, shall be vested in and belong to the municipality, and shall, together with all other property of whatever nature or kind, which may become vested in the municipality, be under its direction, management and control, and shall be held and applied by it as trustee, subject to the provisions and for the purposes of the Act. Such properties include all public streams, banks, reservoirs (which would mean large natural or artificial lakes / ponds used as a source of water supply), cisterns, springs, aqueducts. The duties of the municipalities, in the sphere of public health and sanitation, include obtaining proper and sufficient supply of water for preventing danger to the health of the inhabitants; in the sphere of development, constructing and maintaining drinking fountains, tanks, wells, dams, and the like which obviously will include lakes and ponds; and in the sphere of town planning, devising town planning within the limits of the borough according to the law relating to town planning for the time being in force, as laid down in clauses (B), (C), (D)(a) and (E) of section 87 of the Gujarat Municipalities Act, 1963. The municipality has power to regulate bathing places such as tanks and reservoirs under section 199 of that Act and fouling of water tanks, reservoirs etc. belonging to the municipality is an ofence punishable under section 201 of the Act. Provisions are also made for abatement, of nuisance from wells, ponds etc. under section 202(1).

13. The Panchayats also have a duty to make reasonable provision in regard to supply of water for domestic use and cattle, construction and cleaning of ponds, tanks and wells, constructing drinking fountains, tanks, wells, dams and the like, under Schedule I read with section 99 of the Gujarat Panchayat Act, 1993. Under section 108 (1) of that Act, the State Government may vest in a Panchayat property including wells, riverbeds, tanks, streams, lakes, nallas, canals and water courses. The power of the State Government, to prepare for the whole State the Five Year Plan or the Project and programmes relating to water supply and other matters, is kept intact by section 237 of the Gujarat Panchayat Act, 1993.

14. The powers and functions of Urban Development Authorities prescribed under section 23 of the Gujarat Town Planning & Urban Development Act, include power to execute works in connection with supply of water (clause vi). Similar power is given to the Area Development Authority under section 7(vii). A draft development plan under section 12 shall provide for proposals for reservation of land for public purposes under section 12(2)(b), proposals for water supply and drainage under clause (e), preservation, conservation and development of areas of natural scenery and landscape under clause (h), and for preventing or removing pollution of water under clause (n). These provisions apply to the Urban Development Authority by virtue of section 25 of the Act. Under section 40(3)(a), a Town Planning Scheme may make provisional allotment or reservation of land for public purposes of all kinds as provided in clause (e), for water supply as provided by clause (h), and, drainage as provided under clause (f).

15. The word "environment" as defined in section 2(a) of the Environment (Protection) Act, 1986 includes water and land and inter-relationship which exists among and between water air and land, human beings, other living creatures, plants, micro organism and property. For regulating environmental pollution, the Central Government may by notification make rules which may provide, inter alia, for standards of quality of water under section 6(2)(a) of the said Environment (Protection) Act. Under section 16 of the Water Act, 1974, the main function of the Central Board is to promote cleanliness of streams, [which includes river, water course, inland water, whether natural or artificial, sub-terrenean waters as defined in clause (j) of section 2], and wells in different areas of the States and clause (g) of sub-section (2) of section 16 empowers it to lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well and different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or wells, and the nature of the use of the water in such stream or well or streams or wells. Under section 17(1)(a) of the Water Act, the function of the State Board shall be to plan a comprehensive programme for the prevention control and abatement of pollution of streams and wells in the State and secure the execution thereof. These provisions indicate the anxiety of the legislature to maintain the quality of water for which standards are required to be

laid down.

16. The above constitutional and statutory provisions clearly bring to fore the paramount duty of the State Government, Municipal and Panchayat authorities, the Area Development Authorities and other legal authorities, to protect and improve water bodies as a part of environment and to ensure supply of safe water to the public. The State as the trustee of all natural resources meant for public use, including lakes and ponds, is under a legal duty to protect them. This duty is of a positive nature requiring the State including the Area Development Authorities and the Local Bodies not only to protect the peoples common heritage of lakes, ponds, reservoirs and streams, but to prevent them from becoming extinct and to rejuvenate and preserve them quantitatively by harvesting rainwater and qualitatively by prescribing and enforcing standards of their water. There is ample legislation to arm these authorities with the power to preserve these natural resources and prevent their abuse. The duty of the State in this regard is clearly spelt out by the Apex Court in M.C.Mehta v. Kamal Nath, reported in (1997) 1 SCC 388, and that of every citizen to protect the natural environment including lakes in M.C.Mehta v. Union of India, reported in (1997) 3 SCC 715. The necessity to limit the construction activities in the close vicinity of the two lakes was recognized by the Supreme Court, as noted above. It is rather unfortunate that decades have passed with laws already governing the field being put to disuse by the apathy of the authorities to actively involve themselves in protection and preservation of water bodies. The interim orders made in these petitions have, however, goaded them into some action and the final responses on behalf of the State Government, the Urban Development Authorities and the Municipal Corporation have raised a distinct ray of hope that may in near future glitter on the surface waters of the waterbodies that are promised to be reinforced and preserved.

17. The importance of identifying the waterbodies in the State can hardly be over emphasized. That is indeed the starting point; and, after much exercise, the State Government has placed on record the particulars of the existing lakes and ponds and acceded to the suggestion of this Court that it will notify in the Gazette all the waterbodies indicated in the Development Plans and the Town Planning Schemes, as also the lakes and ponds in other areas of the State where a Scheme or Development Plan is not operative, so as to identify them for all time to come. We accordingly direct that the State Government will notify all the lakes and ponds as may

have been shown in the areas covered by the Town Planning Schemes and Development Plans, as also those in the areas not so covered throughout the State, in short all the waterbodies in the territory of the State that vest in the State and / or the Area Development Authorities or the local bodies including Panchayats, in the official gazette within three months from the date of this order.

18. The next important aspect is that the waterbodies that vest in the State or local bodies should not be alienated or transferred. It appears that, in the past, the land covered by the waterbodies have been put to other uses under the Town Planning Schemes and then a stand is taken up that the Town Planning Schemes having become part of the statute, the Court cannot do anything about it, or, if such land is put to some other use allowed under the scheme, that it will not be appropriate to dig up the construction to revive a waterbody. When State is enjoined upon a duty under Article 48A read with Article 21 of the Constitution to endeavour to protect and improve environment which would include the waterbodies and every citizen is under a duty under Article 51A(g) to protect and improve environment including lakes, which are specifically mentioned therein as a part of environment, and when such material resources need to be protected to enable people to enjoy a quality life which is the essence of the right to life guaranteed by Article 21 as held by the Apex Court in Hinchlal's case (supra), there would virtually be no constitutional option to convert the land under the lakes and ponds to any use that may alter their character as waterbodies in violation of the constitutional mandates to the State and the citizens not only to protect but to improve them. The Supreme Court has made this explicit in M.C.Mehta v. Kamal Nath, reported in (1997) 1 SCC 388 by holding that these natural resources are meant for the public use and cannot be converted into private ownership. Step in this direction is taken by the State Government by declaring Draft of the State Water Policy (2002). Announcements on Water Resources Planning, Development and Management in paragraph 4 of the Policy statement include the strategy of making efforts "to protect and use all fresh water / natural resources like lakes, tanks, ponds, talavadis, springs etc. and preservation of existing freshwater bodies shall be ensured. Traditional water retaining structures shall be protected .....". The Circular dated 15-3-1999 (a copy of which is annexed with the affidavit-in-reply dated 4-4-2002 of the Under Secretary to the Government, Urban Development & Urban Housing Department), was issued instructing the concerned authorities that while making

any original development plan or a revised development plan, the waterbodies such as rivers, lakes, ponds, canals or any other type of waterbodies should be preserved as such waterbodies and should not be included in the proposals for other uses and these waterbodies should not be given any final plot number and their character should be preserved. In order to ensure that the waterbodies in the State which are identified as per the development plans, town planning schemes and the government records and which will be notified in the official gazette, we direct that the State Government, all Area Development Authorities and local Bodies will protect, maintain and preserve all the waterbodies in the State which are identified as per the development plans, town planning schemes and the government records and which will be notified in the official gazette, as waterbodies and they will not be alienated or transferred or put to any use other than as waterbodies.

19. Water has also a destructive potential if the standards of its quality are not maintained. Misuse of water resources and poor water management practices would result in depleted supplies, falling water tables, shrinking inland lakes, and stream flows diminished to ecologically unsafe levels. Water pollution, originating mostly from human activities, occurs even more frequently and in a widespread manner, making the quality of water unsuitable for many uses. The management of water quantity cannot be efficiently done without considering the water quality. Water resources should be managed in conjunction with land resources, and water supply schemes which generate large amount of waste water in consumer areas should be designed and built with the required matching drainage networks and waste water treatment facilities. We would therefore direct the respondents authorities to take steps to get the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law, and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds.

20. Normally, lakes and ponds are expected to be permanently wet year round. They fall in the discipline of limnology which is a sub-system of hydrology that deals with the scientific study of freshwaters specifically those found in lakes and ponds. By the fallout of dust from the atmosphere and the sediments washed into the lake, the lake will gradually become eutrophic, with relatively poor water quality and will gradually become shallower and may eventually disappear. A lake may come to its end physically through loss of its

water or through infilling by sediments and other materials. Lakes and ponds depend for their very existence upon a balance between their main sources of water and the losses that occur, a sort of water budget which may reflect the hydrologic idiosyncrasies of the individual lake. It will usually be difficult to influence the basic natural factors such as precipitation and evaporation that cause the imbalances. When the balance between photosynthesis and decomposition is upset, either too much organic material accumulates without getting decomposed adequately or too many bacteria grow and overabundance of decomposition occurs. Most inland lakes and ponds are eutrophic. Their bottoms get filled up with rich sediments. Eutrophication causes many harmful effects such as deterioration of the scenic value of lakes and ponds due to decrease in transparency or colour changes, water supply problems including the obstruction of filters, unpleasant odors and taste of its water, and loss of acquatic life. This emphasizes the need to proper preservation of lakes and ponds, because, in addition to supply of water, freshwater bodies also provide a resource for recreational activities, such as, boating, swimming, fishing and habitats for various aquatic and terrestrial species. Pond waters can have many uses from irrigation to recreational activities. Extensive management plans and programmes have to be established as a part of geographic initiatives to ensure the preservation, protection and restoration of these important environmental resources. The National Water Policy and the State Water Policy, a draft of which is produced, are exhaustive documents containing great vision but now is the time to move beyond policy declarations to concrete action that may produce results by rejuvenating the waterbodies, most of which appear to be in a state of "comma".

20.1 The Year 2003 is to be celebrated as International Year of Freshwater and the United Nations Educational Scientific and Cultural Organization has undertaken International Hydrological Programme which is an intergovernmental scientific programme in water resources. The I.H.P. - VI (2002 - 2007) Programme has been launched coinciding with the emergence of a profound paradigm shift in society's approach towards water. There is a shift in thinking about water from fragmented compartments of scientific inquiry to a more holistic integrated approach towards both quality and quantity of water, the surface water and ground water as well as atmosphere and terrestrial part of the hydrological cycle. It is, therefore, essential that the State Government, the Area Development Authorities and the

Local Authorities should hold themselves jointly and severally responsible to achieve the purpose of the constitutional and legal mandates for preserving the waterbodies in their proper and useful state. We therefore direct that the State Government, the Area Development Authorities and Local Authorities should take urgent measures to rejuvenate the waterbodies which are to be notified in the gazette by undertaking a declared phased programme of desiltation and make adequate provisions for recharging them by appropriate storm water drains and other feasible means and to take measures against pollution of such waterbodies.

21. Monitoring of the rejuvenation, maintenance and preservation of waterbodies is essential and it is heartening to note that due importance is given to this aspect in paragraph 30.5 of the Draft Water Policy of the State which envisages constitution of Water Resources Council headed by Chief Minister of Gujarat with Ministers of various Departments as members and Chief Secretary as Member Secretary, as also of Water Resources Committee headed by the Chief Secretary with Secretaries of various Government Departments as members for inter-departmental related activities. Having regard to the urgency and importance of having a centralized control and monitoring of the programmes for the protection, preservation and improvement of waterbodies, we direct that the State Government shall expeditiously take steps to constitute Water Resources Council as contemplated in the Draft Water Policy of the State, headed by the Hon'ble the Chief Minister with other Ministers, including the Ministers in-charge of the Environment and Urban Development Departments to oversee the programme for protection, preservation and improvement of the waterbodies. The State Government will also constitute the Water Resources Committee headed by the Chief Secretary which may include the Secretaries of Environment, Urban Development and Agriculture Departments for monitoring the implementation of the programme in a time-bound manner with periodic review of its success. This Committee shall place the particulars of the targets achieved and the causes of non-fulfilment of the targets periodically before the Water Resources Council for its consideration.

22. Without removal of encroachments, the waterbodies under encroachment can hardly be rejuvenated. It is therefore essential for the State Government, the Urban Development Authorities and the local bodies to exercise their statutory powers to remove the existing encroachments and take measures to prevent encroachments.

These authorities are, therefore, directed to prepare an authenticated record in form of videography, photography and panchnamas of the existing encroachments and take urgent steps to remove them in accordance with law and the rehabilitation policies of the Government. Responsibilities of the officers / staff concerned, should be fixed in respect of non-removal of encroachments and fresh encroachments. The Water Resources Committee will closely monitor the removal of encroachments by the concerned authorities, and, the Area Development Authorities and the local bodies shall furnish, quarterly, particulars of such encroachments and their removal to the Water Resources Committee.

23. There has been opposition expressed on behalf of the State Government and the authorities, as also on behalf of the parties whose construction plans are held up, against the directions contained in paragraph 92 of the interim order dated 18-4-2001 to the effect that the Corporation, Development Authority, Collector and the State Government "shall not permit any construction whatsoever within 500 meters of the lake / pond if the size of the waterbody lake / pond is 5000 sq. mtrs. or less, and within 1000 meters, if the size of the lake / pond waterbody is larger than 5000 sq. mtrs. save and except for storage of water or making gradient etc." The learned Advocate General argued that a general provision is made in the Regulation 14 of the Revised draft General Development Control Regulations published in the Gujarat Government Gazette dated 18-5-2002, which is reproduced hereunder :

"14. DISTANCE FROM WATER COURSE

No development whatsoever, whether by filing or otherwise shall be carried out within 30 Mts. from the boundary of the bank of the river where there is no river embankment and within 15 Mts. or such distance as may be prescribed under any other general or specific orders of Government and appropriate Authority whichever is more, from river where there is river embankment but in case of kans, nala, canal, talav, lake, water-bodies etc. it shall be 9.00 mts.

Provided that where a water course passes through a low lying land without any well defined bank, the applicant may be permitted by the competent Authority to

> restrict or direct the water course to an alignment and cross section determined by the competent Authority."

23.1 Admittedly, the above provision did not exist when the interim order was made on 18-4-2001. Exercise of Constitutional power under Article 226 by issuing an interim order cannot be branded as exercise of legislative function. As a precautionary and interim measure, the Court can grant an interim order to prevent constructions that may harm the natural resources which are required to be protected, preserved and improved. Since the direction not to construct within the area specified was of interim nature, given when the above regulation did not exist, and the matter is now being finally decided, the attack against such interim direction on the ground that the Court had impinged on the legislative function of prescribing such limits is unwarranted. The judicial powers of the Court can be exercised in context of executive functioning to prevent wrongs and illegalities and to enforce statutory duties and obligations, and there can arise no question of the Court exercising executive or legislative powers when it makes interim judicial orders under Article 226 to prevent illegalities or wrongs and to enforce statutory obligations and duties. The character of such judicial power is distinct and different from the nature of legislative or executive powers and it has a constitutional backing.

23.2 There can be no dispute over the proposition that the Court will not substitute its wisdom for that of the legislature or the executive. The function of prescribing the parameters for effective preservation of the water bodies undoubtedly is of the State Government, Area & Urban Development Authorities, and the local bodies under the laws, but the established neglect of the water bodies prompted the Court to issue interim directions to prevent construction in the areas specified in the interim order, around the periphery of the lakes and ponds, and that need not irk the authorities any more, when they have now chosen to become alert and alive to the needs of the situation realising the constitutional and legal requirement to protect, preserve and improve lakes and ponds.

23.3 Though initially reliance was placed on the Regulation 14, when asked to disclose on what basis that minimum was fixed, the learned Advocate General for the State and the learned Additional Advocate General for

AUDA very fairly stated that though nine meters was prescribed, it was only the minimum and in reality, the concerned authorities have provided a larger peripheral margins to prevent construction activities, because, the lakes are usually surrounded by garden and then come the peripheral roads which vary in their width and in many case, they were shown to be eighteen meters or even more in the development plans. On such examination of the material, it has been stated in the affidavit filed by the Chief Town Planner that, when planning for a pond is undertaken, embankment itself is phased with varying width according to the requirement of the pond and coupled with 9 mtrs. distance from the pond, may lead to a distance of more than 9 mtrs. from the pond. It is stated that, when the planning for a pond is undertaken, the distance to be kept is determined, depending upon the location of the water body. On the periphery of Kankaria Lake, there is 90 mtrs. to 160 mtrs. green / recreation zone created. On its south-west side, a distance of 120 mtrs. is retained in respect of Chandola lake, as already noted hereinabove. In the affidavit filed by the AUDA by its Chief Executive Officer, it has been stated that, inspite of the provision of minimum 9 mtrs. of distance mentioned in the G.D.C.R. No.14, the AUDA always examines each case on individual basis, according to the requirement of the individual water body for the purpose of fixing of peripheral distance from the water bodies.

23.4 In background of the above averments and statements, we direct that the question of determining the peripheral area surrounding a lake or pond on which construction may be prohibited will be taken up by the concerned authorities for consideration in the context of the development of individual lakes and ponds and the authorities will take decisions thereon having regard to the relevant factors which may have a bearing on the protection, preservation and improvement of lakes, ponds and other water bodies, and once the peripheral area, around a lake or pond, in which there will be no construction allowed is determined, the same shall be notified. All the applications for building permissions which may be pending, may be accordingly decided as per the regulations and keeping in view the requirement of individual waterbodies.

24. To sum up, we issue the following directions:-

[A] The State Government will notify all the lakes and ponds as may have been shown in the areas covered by the Town Planning Schemes and the Development Plans, as

also those in the areas not so covered throughout the State, in short, all the waterbodies in the territory of the State that vest in the State and / or the Area Development Authorities or the local bodies including Panchayats, in the official gazette within three months from the date of this order.

[B] The State Government and all Area Development Authorities and local Bodies will protect, maintain and preserve all the waterbodies in the State which are identified as per the development plans, town planning schemes and the government records and which will be notified in the official gazette, as waterbodies and they will not be alienated or transferred or put to any use other than as waterbodies.

[C] The respondents authorities should take steps to get the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law, and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds.

[D] The State Government, the Area Development Authorities and the Local Authorities should take urgent measures to rejuvenate the waterbodies which are to be notified in the gazette by undertaking a declared phased programme of desiltation and make adequate provisions for recharging them by appropriate storm water drains and other feasible means and to take measures against pollution of such waterbodies.

[E] The State Government shall expeditiously take steps to constitute Water Resources Council as contemplated in the Draft Water Policy of the State, headed by the Hon'ble the Chief Minister with other Ministers, including the Ministers in charge of Environment and Urban Development Departments to oversee the programme for protection, preservation and improvement of the waterbodies. The State Government will also constitute the Water Resources Committee headed by the Chief Secretary which may include the Secretaries of Environment, Urban Development and Agriculture Departments, for monitoring the implementation of the programme in a time-bound manner with periodic review of its success. This Committee shall place the particulars of the targets achieved and the causes of non-fulfilment of the targets periodically before the Water Resources Counci, for its consideration.

[F] The State Government, the Area Development Authorities and the local bodies are directed to prepare

an authenticated record in form of videography, photography and panchnamas of the existing encroachments and take urgent steps to remove them in accordance with law and the rehabilitation policies of the Government. Responsibilities of the officers / staff concerned should be fixed in respect of non-removal of encroachments and fresh encroachments. The Water Resources Committee will closely monitor the removal of encroachments by the concerned authorities, and, the Area Development Authorities and the local bodies shall furnish, quarterly, particulars of such encroachments and their removal to the Water Resources Committee.

[G] The question of determining the peripheral area surrounding a lake or pond on which construction may be prohibited will be taken up by the concerned authorities for consideration in the context of the development of individual lakes and ponds and the authorities will take decisions thereon having regard to the relevant factors which may have a bearing on the protection, preservation and improvement of lakes, ponds and other water bodies, and once the peripheral area, around a lake or pond, in which there will be no construction allowed is determined, the same shall be notified. All the applications for building permissions which may be pending, may accordingly be decided as per the regulations and keeping in view the requirement of individual waterbodies.

Rule is made absolute in all these petitions accordingly with no order as to costs. All the applications filed in these petitions stand disposed of in light of this decision with no order as to costs.

25. While parting, we record our appreciation of the efforts put in by the Committee in assisting the Court by placing on record important material having bearing on the issues involved in these petitions. We express our gratitude to the Chairman of the Committee for the attention that he has bestowed to the questions involved in these matters and for his enlightening report and the pains that he took in gathering the material which is mentioned in the report. The learned Government Pleader, in fairness, states that appropriate orders may be made for remunerating the Members of the Committee, which will be borne by the State Government. While expressing our gratitude for the assistance rendered by the Committee, we direct the State Government to pay a token sum of Rs.25,000=00 [Rupees twenty five thousand only] to the Chairman of the Committee and Rs.15,000=00 [Rupees fifteen thousand only] to each of the Members of the

Committee, other than the government officers. This will be over and above the reimbursement of the expenses that may have been incurred by the Committee which will be promptly done by the State Government.

[R.K.ABICHANDANI, J.]

[D.A.MEHTA, J.]

parmar*